

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 403 - SB 378

February 20, 2023

SUMMARY OF BILL: Regulates the production, sale, purchase, and possession of hemp-derived cannabinoids. Makes it a Class A misdemeanor offense to knowingly sell or distribute cannabinoid products to person under 21 years of age and or for a person who is under 21 years of age to knowingly purchase, possess, or accept a cannabinoid product. Establishes that it is a Class A misdemeanor offense to engage in the business of selling or distributing products containing hemp-derived cannabinoids in this state without a valid license. Any product sold in violation of this requirement is subject to seizure and forfeiture.

The Department of Agriculture (DOA) is required to administer this act, including the promulgation of rules, licensing of producers and retailers, the creation of a registry of qualified third-party testing laboratories, and inspection and enforcement of licensed producers and retailers.

Requires that licensed producers and retailers obtain licensure prior to commencement of business or by January 1, 2024, whichever is later. An initial and renewal producer license will cost \$500 and a retailer license will cost \$250, and both require annual renewal. All proceeds from license fees are to be allocated to the Tennessee Agriculture Regulatory Fund (Fund), which shall be used for the administration of this act. Requires that both producers and retailers enter into a contract with a third-party laboratory that has applied and been accepted onto the registry created and maintained by the DOA.

Authorizes the DOA to deny or revoke licenses and issue civil penalties of up to \$1,000 for each violation of rules, as promulgated by the department.

Establishes that, in addition to application of the state and local sales and use tax, all sales of such cannabinoid products are subject to an additional 5 percent sales tax, of which proceeds are to be allocated to a special account (Hemp Fund) within the General Fund, only to be used by the DOA exclusively for the regulation of hemp-derived cannabinoid products.

Establishes child-safety packaging and labeling requirements. Establishes restrictions against advertising which may appeal to minors.

Effective upon becoming law for purposes of promulgating rules or forms. Effective July 1, 2023 for purposes of Class A misdemeanor offenses. Effective January 1, 2024 for remainder of provisions.

HB 403 - SB 378

FISCAL IMPACT:

Increase State Revenue – \$5,000,000/FY23-24/Hemp Fund

\$10,000,000/FY24-25 and Subsequent Years/Hemp Fund

\$1,100,000/FY23-24 and Subsequent Years/

Tennessee Agriculture Regulatory Fund

Increase State Expenditures – \$157,000/FY23-24/General Fund

\$154,600/FY24-25 and Subsequent Years/General Fund

\$1,189,800/FY23-24/Hemp Fund and

Tennessee Agriculture Regulatory Fund

\$1,170,600/FY24-25 and Subsequent Years/Hemp Fund

and Tennessee Agriculture Regulatory Fund

Other Fiscal Impact – The Department of Agriculture will need additional resources including, but not limited to, employing additional staff. The extent and timing of the needed resources will be dependent on the promulgation of rules and the growth of the program and cannot be reasonably quantified at this time. Any additional expenditures incurred will be covered through the revenue collected in the Hemp Fund.

Assumptions:

Revenue:

- This legislation creates a five percent tax on retail sales of products containing hemp-derived cannabinoids, effective on January 1, 2024. Revenue from this tax is required to be distributed into the Hemp Fund and allocated to the DOA for the regulation of products containing a hemp-derived cannabinoid in this state.
- Currently, state and local sales and use tax is collected on hemp-derived cannabinoids; therefore, this legislation will not estimate any additional collections of such tax.
- Based on Fiscal Review Committee research, the market in this state, to which this legislation applies, is valued to exceed \$200,000,000.
- It is assumed that the market value of such products is related to retail sales.
- Due to the effective date of January 1, 2024, tax collections in FY23-24 will be equal to 50 percent of annual tax collections.
- There will be an increase in state revenue to the Hemp Fund in FY23-24 of \$5,000,000 ($\$200,000,000 \times 5\% \times 50\%$).
- There will be a recurring increase in state revenue to the Hemp Fund in FY24-25 and subsequent years of \$10,000,000 ($\$200,000,000 \times 5\%$).
- This legislation establishes licensing fees of \$500 for producers and \$250 for retailers, both requiring annual renewal.
- All license fee revenue is required to be allocated to the Tennessee Agriculture Regulatory Fund (TAR Fund) to be used exclusively for the administration of this program.

- The exact number of producer and retailer licenses which will be issued subsequent to this act is unknown.
- For purposes of this fiscal note, it is assumed that there will be 200 producer licenses and 4,000 retail licenses issued statewide, which all seek licenses in the first fiscal year.
- There will be an increase in state licensing fee revenue to the TAR Fund in FY23-24 and subsequent years of \$1,100,000 [(200 producers x \$500) + (4,000 retailers x \$250)].
- This legislation establishes civil penalty fees for violations of this act or rules promulgated by the DOA; however, for purposes of this fiscal note, any such fee revenue is assumed to be not significant.

Expenditures:

- Based on information provided by the DOA, the department will require 16 additional positions, including three additional food and dairy inspector-2 positions per grand district, or nine additional inspector positions statewide, three additional administrative services assistant-2 positions, three additional laboratory technician-2 positions, and one project director position.
- It is assumed that these positions will be filled on July 1, 2023, in preparation of the January 1, 2024 effective date of this act.
- This legislation requires expenditures incurred by the DOA in the administration of this act be incurred out of the Hemp Fund and the TAR Fund.
- There will be a one-time increase in state expenditures in FY23-24 of \$19,200 for computers.
- There will be a recurring increase in state expenditures to the Hemp Fund and TAR Fund \$1,170,641 (\$895,104 salaries + \$265,931 benefits + \$9,600 supplies) in FY24-25 and subsequent years.
- There will be a total increase in state expenditures to the Hemp Fund and TAR Fund of \$1,189,841 (\$1,170,641 + \$19,200) in FY23-24.
- Based on information provided by the Department of Revenue (DOR), the department will require two additional tax auditor-2 positions for this new tax, beginning July 1, 2023.
- Expenditures incurred by the DOR for administration and enforcement of this legislation will be paid for out of the General Fund.
- There will be a one-time increase in state expenditures in FY23-24 of \$2,400 for computers.
- A total increase in state expenditures to the General Fund in FY23-24 of \$157,012 (\$154,612 + \$2,400).
- There will be a recurring increase in state expenditures to the General Fund of \$154,612 [(\$59,496 salary + \$17,210 benefits + \$600 supplies) x 2 tax auditor-2 positions] in FY23-24 and subsequent years.

Other:

- There will not be a sufficient number of prosecutions for state or local government to experience any significant increase in revenue or expenditures.
- The DOA will need additional resources including, but not limited to, eventually employing additional staff. The extent and timing of the needed resources will be

dependent on the promulgation of rules and the growth of the program and cannot be reasonably quantified at this time. Any additional expenditures incurred will be covered through the revenue collected in the Hemp Fund.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/jb